HOUSE No. 4998

The Commonwealth of Massachusetts

The committee on Bills in the Third Reading, to whom was referred the Bill relative to the Nantucket Island Land Bank (House, No. 4106), reports recommending that the same be amended by substitution of the accompanying bill (House, No. 4998); and that when so amended the same will be correctly drawn. August 23, 2010.

VINCENT A. PEDONE, For the committee.

The Commonwealth of Massachusetts

In the Year Two Thousand and Ten

An Act to further clarify the Nantucket Islands Land Bank Act regarding real property interests subject to the land bank act's transfer fee.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 "SECTION 1. Section 1 of chapter 669 of the acts of 1983 is hereby amended by striking out the
- 2 definition of "Real property interest" and inserting in place thereof the following definition:-
- 3 "Real property interest", any present or future legal or equitable interest in or to real property, and any
- 4 beneficial interest therein, including the interest of any beneficiary in a trust which holds any legal or
- 5 equitable interest in real property; the interest of a partner or member in a partnership or limited liability
- 6 company, the interest of a stockholder in a corporation, the interest of a holder of an option to purchase
- 7 real property, the interest of a buyer or seller under a contract for purchase and sale of real property, and
- 8 the transferable development rights created under chapter 183A of the General Laws; but shall not include
- 9 any interest which is limited to any of the following: the dominant estate in any easement or right of way;
- 10 the right to enforce any restriction; any estate at will or at sufferance; any estate for years having a term
- of less than 30 years; any reversionary right, condition, or right of entry for condition broken; and the
- 12 interest of a mortgagee or other secured party in any mortgage or security agreement.
- 13 SECTION 2. Section 10A of said chapter 669 is hereby repealed.
- SECTION 3. The first paragraph of section 12 of said chapter 669 is hereby amended by adding the
- 15 following sentence:-- Any otherwise exempt transfer shall not be exempt in the event that such transfer,
- by itself or as part of a series of transfers, was made for the primary purpose of evading the fee imposed
- 17 by section 10.
- SECTION 4. Paragraph (i) of said section 12 of said chapter 669 is hereby amended by striking out, in
- lines 5 to 10, inclusive, as appearing in section 3 of chapter 392 of the acts of 1991, the words "the
- transferor retains a controlling interest in such corporation after such formation or (ii) with respect to a
- 21 partnership, the transferor retains after such formation rights to capital interests in excess of fifty percent
- of the capital interests within such partnership or retains rights to profit interests within such partnership
- 23 in excess of fifty percent of the total profit interests within such partnership" and inserting in place thereof

- 24 the following words:-- the transferor retains an interest in the newly formed corporation which is
- equivalent to the interest the transferor held prior to the transfer, or (ii) with respect to a partnership or
- 26 limited liability company, the transferor retains after such formation rights in capital interests and profit
- 27 interests within such partnership or limited liability company which are equivalent to the interest the
- 28 transferor held prior to the transfer.
- 29 SECTION 5. Said section 12 of said chapter 669 is hereby further amended by striking out paragraph (j),
- 30 as most recently amended by section 5 of chapter 370 of the acts of 2002, and inserting in place thereof
- 31 the following paragraph:--
- 32 (j) Transfers made to a stockholder of a corporation in liquidation or partial liquidation of the
- corporation, and transfers made to a partner of a partnership or to a member of a limited liability company
- in dissolution or partial dissolution of the partnership or limited liability company; but the transfer shall
- 35 be exempt only if (i) with respect to a corporation, the transferee receives property, including real
- 36 property interests and other property received, which is the same fraction of the total property of the
- 37 transferor corporation as the fraction of the corporation's stock owned by the transferee prior to the
- transfer, or (ii) with respect to a partnership or limited liability company, the transferee receives property,
- 39 including real property interests and other property received, which is the same fraction of the property of
- 40 the partnership or limited liability company as the fraction of the capital and profit interests in the
- 41 transferor formerly owned by the transferee.
- 42 SECTION 6. Said section 12 of said chapter 669 is hereby further amended by adding the following
- 43 paragraph:--
- 44 (n) Transfers of minority interests in corporations, trusts, partnerships or limited liability companies
- 45 which are publicly traded, which trades are not part of a series of transfers which together constitute a
- 46 transfer of control of a corporation, trust, partnership or limited liability company.
- 47 SECTION 7. Section 14 of said chapter 669 is hereby amended by adding the following paragraph:--
- 48 (d) If the commission has determined that a fee is due by asserting the application of the evasion of fee
- 49 doctrine described in section 12, then the transferee shall have the burden of demonstrating by clear and
- 50 convincing evidence as determined by the commission that the transfer, or series of transfers, possessed
- both: (i) a valid, good faith business purpose other than avoidance of the fee set forth in section 10 and (ii)
- 52 economic substance apart from the asserted fee avoidance benefit. In all such cases, the transferee shall
- also have the burden of demonstrating by clear and convincing evidence as determined by the
- 54 commission that the asserted non-fee-avoidance business purpose is commensurate with the amount of
- 55 the fee pursuant to section 10 to be thereby avoided."